

REMARKS

DOUBLE PATENTING

Claims 1-6 and 13-24 have been rejected on the grounds of nonstatutory obviousness-type double patenting over claims 1-12 of U.S. Pat. No. 6,737,447 (herein '447). The examiner has previously indicated that if the claims are modified to overcome the prior art by structural means excluding crosslinking as the second fiber the claims would be allowable. This was somewhat confusing to Applicant, as it is not well understood how crosslinking can be considered to be a second fiber or second fiber component. Because the cited art only teaches a single fiber and the crosslinking thereof, Applicant assumes that the Examiner has treated the crosslinking described in the prior art as the previously-claimed "second fiber *component*", with emphasis on the term "component" because it is assumed the examiner considered the crosslinking to be a second "component" of that single fiber. Applicant notes that the first and second fiber components previously claimed were always intended as separate components of the medical device, and this should now be very clear because Applicant has removed the term "component" from the claim. In response claims 1, 3, 4, 5, 6, 18, and 19 have been amended to remove the term "component" in relation to the polymeric carrier fiber and the second fiber. The claims are now clearly directed to a medical device with two fibers. The first fiber is a polymeric carrier fiber which is capable of reversibly reacting with nitric oxide. The second fiber functions to sequester the predrug from reactive species. It is believed that this follows the Examiner's suggestion to overcome the prior art by excluding crosslinking as the second fiber, but, if such is not the case, Applicant respectfully requests that the Examiner contact the undersigned attorney, who would be happy to assist the Examiner in providing the type of claim desired.

Regarding the present claims and the prior art, the '447 patent only contains claims directed to one nanofiber, poly(ethylenimine) diazeniumdiolate, and the '447 patent does not claim a second fiber. Additionally, the '447 claims do not teach a fiber that functions to sequester a predrug. Instead, the crosslinking of the single fiber slows the release of the predrug. Therefore the limitation "wherein the second fiber functions to sequester said predrug from reactive species" is not taught or made obvious by the

claims Because the claims of '447 patent does not disclose all claimed limitations the application is not made obvious or anticipated by the claims of '447.

Additionally, Applicant disagrees with the logic behind the alleged obviousness of the present claims in light of the '447 patent. There is nothing in the '447 patent that would teach or suggest the use of a second fiber to sequester a predrug. Indeed, the Examiner has admitted as much in saying that a "different mechanism is used to slow and delay" the activation of the nitric acid precursor. See Office Action, page 3. Having admitted a structural difference, the Examiner must provide some rational for why such a difference is obvious. Similar functioning does not mean that two devices are obvious variants. Indeed, distinctive patentable devices can function identically and yet still be patentably distinct. Additionally, the Examiner has not explained why the limitations of any of the **dependent** claims are obvious of the claims of the '447 patent. Because the examiner has not articulated a rational for why the claims are obvious a *prima facie* case of obviousness has not been established.

Regardless, it is believed that the present claims and arguments will overcome the application of the double patenting rejection.

No new fees are believed to be due at this time. However, the undersigned attorney hereby authorizes the Commissioner to charge payment of any fees associated with the timely filing of this document to Deposit Account No. 18-0987.

Respectfully submitted,

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